ABOUT THE WEEKLY SUMMARY

The Weekly Summary of NLRB cases, as the name implies, is a publication that summarizes each week all published NLRB decisions in unfair labor practice and representation election cases, except for summary judgment cases. It also lists all decisions of NLRB administrative law judges and direction of elections by NLRB regional directors. Links are established from the weekly summary index to the summaries and from the summaries to the full text of the decisions.

Weekly Summary of NLRB Cases

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CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

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Sea Ray Boats, Inc. (12-CA-19077, et al.; 336 NLRB No. 70) Merritt Island, FL Oct. 1, 2001. The Board affirmed the administrative law judge's finding that the Respondent had engaged in certain unfair labor practices, including the adoption of a "two strike" rule--prohibiting union talk and providing for the issuance of a warning for the first offense and termination for the second offense--in response to the advent of the Union's organizing campaign. [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Teamsters Local 385; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Cocoa, April 27-28, 1999. Adm. Law Judge Lawrence W. Cullen issued his decision Sept. 30, 1999.

* * *

Ryder Student Transportation Services, Inc. (17-CA-20128; 336 NLRB No. 78) Columbia, MO Oct. 1, 2001. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (3) of the Act when on April 9, 1999, it interrogated and then discharged employee Louis Tritschler because he engaged in union or protected concerted activities. It agreed with the judge that Tritschler was a rank-and-file employee and not a supervisor, manager, or confidential employee. [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Louis Tritschler, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Columbia on Jan. 11, 2000. Adm. Law Judge William N. Cates issued his decision Feb. 1, 2000.

* * *

Federal Security, Inc. and its alter egos or agents, James R. Skrzypek and Janice M. Skrzypek (13-CA-38669; 336 NLRB No. 52) Chicago, IL Oct. 1, 2001. The Board adopted the recommendations of the administrative law judge and held that the Respondents violated Section 8(a)(1) of the Act by filing an Illinois State court lawsuit seeking monetary damages from former employees. The Board ordered the Respondents to take affirmative action within 7 days after service of its decision and order to have the lawsuit in this case dismissed and the default orders in the proceeding vacated. [HTML] [PDF]

The State court lawsuit seeks to recover moneys expended by the Respondents to defend against the allegations in the earlier unfair labor practice case where the Board, in agreement with the judge, found that the Respondent violated the Act by, among others, terminating its security guards for participating in a protected concerted walkout from their posts at multi-residence public housing sites operated by the Chicago Housing Authority (CHA) and misinforming the CHA as to the nature of the walkout, with the result that participants were included on a list of employees barred from working at CHA properties. 318 NLRB 413 (1995), enf. denied *NLRB v. Federal Security, Inc.*, 154 F.3d 751 (7th Cir. 1998).

In the instant matter, the Respondents contended that the Board lacked jurisdiction; that Federal Security no longer exists as a corporation; and the Skryzpeks are simply individuals who are not presently engaged in interstate commerce. Respondents also asserted that the former employees--the defendants in the State court action--are no longer employees of Federal Security or employees under the Act.

Member Truesdale noted that in the earlier proceeding, he would not have found the walkout by Federal Security's guard employees to be protected and consequently, would not have found their discharge by Federal Security to be unlawful. However, he agreed with the judge that the State court lawsuit at issue in this case violated Section 8(a)(1).

(Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Joseph Palm, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Chicago on March 13,

2001. Adm. Law Judge Robert A. Giannasi issued his decision May 1, 2001.

* * *

Fallon-Williams, Inc. and its alter egos G.B.S. Consultants, Ltd., d/b/a Fallon-Williams Services, and Mercury Merchanical Services, Inc. (1-CA-34968, 35272; 336 NLRB No. 54) Boston and Quincy, MA Sept. 30, 2001. A Board majority of Members Liebman and Truesdale, with Chairman Hurtgen dissenting in part, adopted the administrative law judge's findings that Respondents G.B.S. Consultants (GBS) and Mercury Mechanical Services (Mercury) violated Section 8(a)(5) and (1) of the Act by repudiating their collective-bargaining agreement with the Union, failing to apply the provisions of the agreement to the operations of Mercury, and failing and refusing to furnish the Union with relevant information. The majority determined that the complaint did not allege any unlawful conduct during 1995 and early 1996 and, accordingly, dismissed the complaint with regard to Respondent Fallon-Williams, Inc., which permanently ceased to perform work in June 1995; and found that GBS and Mercury violated the Act only beginning August 18, 1996. [HTML] [PDF]

In his decision, the judge held that GBS was the successor to Fallon-Williams and that GBS assumed Fallon-Williams' collective-bargaining agreement with the Union. He also found that GBS and Mercury were alter egos, and concluded that Mercury acted unlawfully by failing to honor the terms of the contract and by failing to supply the requested information.

The Respondents contended they should be absolved from their duty to apply the contract terms that had been applied to Fallon-Williams. In June 1995, Fallon-Williams was more than $100,000 in arrears in payments to the union fringe benefit funds and by June 1996, GBS had reduced them to just over $50,000. At that point, the Union exercised its contractual right to remove the employees from GBS while GBS remained delinquent in payments. The Respondents argued they should not have to pay into the funds during periods in which the Union was refusing to supply employees because by removing the employees, the Union prevented GBS from fulfilling its contracts with customers and, consequently, from making further payments to the fund.

Dissenting in part, Chairman Hurtgen agreed with his colleagues that GBS is a successor to Fallon-Williams and that the two firms are not a single employer or alter egos. However, he does not agree that Mercury has been shown to be an alter ego of GBS. In his view, the General Counsel has failed to show that one entity is an alter ego of another by showing the transaction between the two was motivated by intent to avoid legal obligations under the Act.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Plumbers Local 537; complaint alleged violation of Section 8(a)(1) and (5). Hearing in Massachusetts. Adm. Law Judge Stephen J. Gross issued his decision Sept. 4, 1998.

* * *

Overnite Transportation Co. (14-CA-25643, et al.; 336 NLRB No. 31) St. Louis, MO Sept. 28, 2001. The Board, in agreement with the administrative law judge, found that the Respondent violated Section 8(a)(1) of the Act by threatening an employee with disciplinary action if he crossed a picket line and fostering and aiding a Union decertification attempt by soliciting an employee to circulate a decertification petition and offering to pay the employee for time spent in circulating the petition. [HTML] [PDF]

The Respondent contended that the judge decided the credibility issues in this case based on the Respondent's prior unfair labor practices and thereby violated Rule 404 of the Federal Rules of Evidence. The fourth paragraph of the judge's decision included the following statement:

> All of the events in the instant case have a highly charged, polarized atmosphere as a backdrop, familiar ground for the parties in this case. See *Overnite Transportation Co.*, 296 NLRB 669 and *Overnite Transportation Co.*, 329 NLRB No. 91, Slip Op. at 64. I have taken into account the history of this Respondent in assessing the various issues of this case, giving this history significant weight. *Florida Steel Corp.*, 231 NLRB 651, 658 (1977).

The Board rejected the Respondent's contention that the statement establishes that all of the judge's credibility resolutions are necessarily tainted by reliance on Overnite's past violations of the Act. Rather, it found that the judge's credibility determinations were properly made on the basis of the evidence adduced in this proceeding.

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Teamsters Local 600; complaint alleged violation of Section 8(a)(1). Hearing at St. Louis on Feb. 5, 2001. Adm. Law Judge Robert A. Pulcini issued his decision April 30, 2001.

* * *

Eldeco, Inc. (11-CA-16006, et al.; 336 NLRB No. 82) Greenville, SC Oct. 18, 2001. The Board denied the General Counsel's motion for partial summary judgment and remanded the proceeding to the Regional Director to schedule a hearing before an administrative law judge on the compliance specification allegations. The General Counsel contended the Respondent's answer and amended answer to the compliance specification were insufficient based on Section 102.56(c) of the Board's Rules and Regulations because they offered only a general denial to the gross backpay allegations. The Board however accepted the Respondent's response to the Notice to Show Cause why the General Counsel's motion should not be granted as a second amended answer that is sufficiently specific under the Board's Rules. [HTML] [PDF]

The Respondent's response set forth with specificity the Respondent's disagreement with the proposed backpay formula, and furnishes alternative figures. It is undisputed that the response, misfiled with the Region, was not timely filed with the Board. The Respondent submits it erred because of a miscommunication between the Region and a paralegal in the Respondent's Counsel's office. The Board noted it generally does not accept late-filed answers, but has made an exception where the answer was timely filed but with an incorrect office of the Agency. It added that although counsel for the General Counsel denied any knowledge of the alleged miscommunication, "the pleadings must be read in light most favorable to the nonmoving party," in denying the motions of the General Counsel and the Charging Party to reject the response.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

General Counsel filed motion for partial summary judgment May 14, 2001.

* * *

Onyx Environmental Services, L.L.C., d/b/a Tradewaste Incineration (14-CA-25788, 14-RC-12080; 336 NLRB No. 83) Sauget, IL Oct. 23, 2001. The Board upheld, as modified, the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act and engaged in objectionable conduct affecting the results of the representation election held in Case 14-RC-12080 on October 21-22, 1999, by certain conduct. Specifically, the Respondent coercively interrogated employees about their protected concerted activity; interfered with their protected concerted activity by telling them that a notice regarding another employee's wage rate was inappropriate, harassing, and disruptive; predicted that it would lose its parent company's financial support and loss of customers if the employees elected the Union to represent them; and suspended employee Nathan Williams from October 8-22, 1999, for engaging in protected concerted activity. The Board set aside the election (Chemical Workers International/UFCW lost 56-46) and directed a second election. [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Chemical Workers International/UFCW; complaint alleged violation of Section 8(a)(1). Hearing at St. Louis on March 8, 2000. Adm. Law Judge C. Richard Miserendino issued his decision Aug. 3, 2000.

* * *

Nortech Waste (20-CA-28884; 336 NLRB No. 84) Roseville, CA Oct. 25, 2001. The administrative law judge found, and the Respondent did not except, that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain in good faith with Operating Engineers Local 3 by unilaterally implementing terms for the payment of yearend bonuses without prior notice

to the Union. Addressing the General Counsel's and Charging Party's exception to the judge's failure to include a broad cease-and desist provision in his recommended Order, the Board noted it issued a broad order to remedy the unfair labor practices found in a recent case involving the same Respondent. *Nortech Waste*, 336 NLRB No. 79 (2001). Because of the Respondent's serious prior unfair labor practices, the Board agreed that a broad Order is warranted in this case and substituted broad injunctive language requiring the Respondent to cease and desist from violating the Act "in any other manner" for the judge's recommended provision. See *Hickmott Foods*, 242 NLRB 1357 (1979) (repeat offenders of the Act subject to broad injunctive relief). [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Operating Engineers Local 3; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Sacramento on July 20, 1999. Adm. Law Judge Timothy D. Nelson issued his decision Sept. 2, 1999.

* * *

Oden Mechanical Contractors, Inc. (17-CA-20983; 336 NLRB No. 87) Ft. Riley, KS Oct. 26, 2001. Agreeing with the administrative law judge, the Board found that the Respondent refused to consider for hire and refused to hire James Cox, Dan Droge, and Kirk Miller because of their union activities or affiliation in violation of Section 8(a)(3) and (1) of the Act; and interrogated employees about their union sentiments and telling employees it will not consider them for hire if they are union and/or because of Plumbers Local 165. The Board rejected the Respondent's contention, relying on a long-outdated version of the Board's Rules and Regulations, that the judge erred by refusing to permit it to file a posthearing brief prior to the issuance of her bench decision, stating: [HTML] [PDF]

> Had the Respondent accurately quoted the current version of Sec. 102.42, it would have revealed that there is no support for its contention that the judge's ruling was in error. Sec. 102.42 of the Board's Rules, as amended 61 Fed. Reg. 6940 (Feb. 23, 1996), provides '*[i]n the discretion of the administrative law judge*, any party *may*, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law, who may fix a reasonable time for filing, but not in excess of 35 days from the close of the hearing.'

The Board also rejected the Respondent's contention that it was denied due process by the judge's denial of its motion to produce certain material, known as "COMET material," pertaining to the Union's training of organizers. The subpoena was directed to the Union's assistant business agent and organizer, James Cox, who testified that he did not have the COMET materials in his possession and that he has never seen the material in the Union's office. The Board, noting Cox's testimony, found the judge properly denied the motion to produce.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Plumbers Local 165; complaint alleged violation of Section 8(a)(1). Hearing at Overland Park, April 4-5, 2000. Adm. Law Judge Jane Vandeventer issued her decision April 5, 2001.

* * *

D & D Enterprises, Inc. d/b/a Beltway Transportation Co. (5-CA-22170; 336 NLRB No. 76) Forestville, MD Oct. 1, 2001. The Board affirmed the administrative law judge's recommended Order, reaffirmed its original Order reported at 319 NLRB 579 (1995), and ordered the Respondent to reinstate economic strikers Jimmy Williams and David Johnson to their former positions as regular run drivers and, on request, to bargain with Teamsters Local 639. The Board in 1995 found that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to reinstate Williams and Johnson to their former jobs and subsequently discharging them, and Section 8(a)(5) and (1) by withdrawing recognition from the Union at a time when it lacked objective evidence that the Union had lost the support of a majority of unit employees. Thereafter, the Board filed a petition for enforcement of its Order with the U.S. Court of Appeals for the Fourth Circuit. [HTML] [PDF]

On September 4, 1997, the court enforced the Board's findings that the Respondent had unlawfully failed to reinstate Williams

and Johnson to their former positions as regular run drivers at the conclusion of the economic strike. *NLRB v. D & D Enterprises*, 125 F.3d 200 (4th Cir. 1997). The court remanded the case to the Board to determine whether, given the Respondent's subsequent discharges of Williams and Johnson from utility driver positions, it was still obligated to reinstate them to their former position as regular run drivers and whether the Respondent possessed a good-faith doubt of the Union's majority status when it withdrew recognition. Because it found that the employees' prestrike jobs were available poststrike, the court rejected the Respondent's contention that it had not violated Section 8(a)(3) by failing to reinstate Williams and Johnson to their prestrike positions as regular run drivers because it had reinstated them to the "substantially equivalent" position of utility driver when the strike ended.

After the Board accepted the court's remand, but before it remanded the case to the judge, it provided the parties an opportunity to state their positions on remand. In its position statement on remand, the Respondent placed in issue whether the court's factual finding--that both regular run drivers and utility drivers had to report to work at the same time--was correct. The Board in 1999 remanded the case to the judge to resolve the issues raised by the court and "to address whether regular drivers and utility drivers had to arrive at work at the same time and, if not, what effect this had, if any, on their failure to make a livable wage and abandonment of work."

In its supplemental decision, the Board found there were substantial differences between the regular run and utility positions that bear on the existence of a "causal nexus" between the Respondent's failure to reinstate Williams and Johnson to the regular run positions and its subsequent discharge of them from their utility run positions. It also found, addressing a specific issue remanded by the court, that Williams arrived at work on time as a utility driver, but was still unable to make a livable wage. The Board noted Johnson did arrive late for work on certain days after the strike, but had the Respondent reinstated him to his regular run position after the strike, as it was lawfully required to do, Johnson would have been on time for work on those days and would not have lost his run for the day. Assuming that Williams and Johnson did arrive late to work after the strike on certain days, there is still a "causal nexus" between the Respondent's failure to reinstate them to their regular run positions after the strike and their subsequent discharges for abandonment of work, the Board held, in affirming the judge's original finding that Respondent's discharge of them violated Section 8(a)(3) and (1).

Finding a causal relationship between the Respondent's unfair labor practices and the decertification petition signed by 14 of 28 unit employees, the Board held the petition was tainted by the Respondent's misconduct and the Respondent could not rely on it to support its asserted good-faith doubt of the Union's majority status. In so concluding, the Board considered the court's concerns that "many" of the petition signers professed ignorance of the Respondent's unfair labor practices relating to Williams and Johnson at the time they signed the petition; and the absence of any evidence suggesting a connection between employee disaffection from the Union and the Respondent's misconduct.

(Members Liebman, Truesdale, and Walsh participated.)

Adm. Law Judge John L. West issued his supplemental decision Aug. 20, 1999.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Vos Electric, Inc. (Electrical Workers [IBEW] Local 158) Green Bay, WI October 23, 2001. 30-CA-15347-1; JD-138-01, Judge Paul Bogas.

Kamtech Inc. (Boilermakers) Owensboro, KY October 23, 2001. 25-CA-25047-1,-2; JD-137-01, Judge Karl H. Buschmann.

Tri-County Paving, Inc. (Operating Engineers Local 139) De Forest, WI October 26, 2001. 30-CA-15275; JD-141-01, Judge Richard H. Beddow, Jr.

Merrow Machine Company (an Individual) Newington, CT October 26, 2001. 34-CA-9476; JD(NY)-53-01, Judge Joel P. Biblowitz.

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WITHDRAWAL OF ANSWER

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the withdrawal of the Respondent's answer to the complaint.)

Atomic Fire Sprinkler LLC (Sprinkler Fitters Local 669) (17-CA-20878; 336 NLRB No. 81) Oklahoma City, OK October 18, 2001.